

SERVICE DATE - JULY 13, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42055

HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE—PETITION  
FOR DECLARATORY ORDER

Decided: July 12, 2001

The Household Goods Carriers' Bureau Committee of the American Moving and Storage Association (HGCB or petitioner) has filed a petition seeking reconsideration of the decision of the Director of the Office of Proceedings (Director), served on March 28, 2001, denying its petition for a declaratory order to resolve the regulatory status of certain motor carriers that petitioner states are transporting household goods.<sup>1</sup> Replies to the petition for reconsideration were filed by ABF Freight System, Inc., and (jointly) by Consolidated Freightways Corporation of Delaware and CF Moves U.com, Inc. We will deny the petition for reconsideration.

BACKGROUND

HGCB initially sought a declaratory order from both the Board and the Department of Transportation. In the March 28, 2001 decision, the Director noted that under 49 U.S.C. 13301(a), jurisdiction over motor carrier transportation and operations under Part B of Subtitle IV of Title 49 of the United States Code vests in the Secretary of Transportation (Secretary) unless otherwise specified.<sup>2</sup> Under Part B of Subtitle IV, the Board is assigned responsibilities with respect to household goods rate reasonableness, household goods tariff requirements, and household goods carrier limitations on liability (released rates). But, as the Director's decision indicated, the Board is not authorized to determine whether a given carrier is a household goods carrier, a determination that is fundamentally a licensing function. Accordingly, the Director concluded that the issue raised by HGCB is within the subject-matter jurisdiction of the Secretary (and, in particular, the Federal Motor Carrier Safety Administration (FMCSA)), rather than the Board, and he denied the request for declaratory relief.

Subsequently, by letter dated June 13, 2001, FMCSA denied HGCB's petition for declaratory order that was pending before it, on the basis of ICC precedent declining to apply household goods regulatory requirements to general freight carriers transporting crated household goods. FMCSA explained that there is no evidence that in the ICCTA Congress intended to change the treatment of residential household goods transportation. FMCSA also confirmed that there has been no change in the long-standing differentiation between traditional household goods carriers and general freight carriers in the licensing process.

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<sup>1</sup> Specifically, the declaratory order request identified companies that, according to petitioner, offer to transport household goods, without performing the functions of packing and unpacking the shipments, or loading and unloading the vehicles used to provide the transportation.

<sup>2</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Board and others to the Secretary, effective January 1, 1996.

## DISCUSSION AND CONCLUSIONS

Petitioner argues that whether an entity is licensed to perform the service it, in fact, performs does not affect our authority to assert jurisdiction in those areas specifically reserved to us by Congress. Petitioner cites Petition for Declaratory Order—Nancy Hall v. Aloha International Moving Services, Inc., Allied Van Lines Inc., VIP Transport, Inc., and Allied International N.A., Inc., STB Docket No. 42048 (STB served Mar. 14, 2001) (Nancy Hall), as a case where we asserted jurisdiction to address tariff applicability and rate reasonableness issues, even though the licensing question was unresolved. Petitioner's reliance on Nancy Hall is misplaced, as the case is inapposite. In that case, a court referred to us for our resolution issues that were clearly within our jurisdiction.<sup>3</sup> Here, petitioner would have us circumvent FMCSA jurisdiction and resolve what is clearly a licensing question, based upon petitioner's theory that it is a "threshold issue" as to matters within our own jurisdiction. According to petitioner, unless we adopt its approach, any proceeding involving motor carrier compliance with statutory provisions over which we have explicit jurisdiction would have to first go to the Secretary for a determination as to whether a carrier is subject to the licensing requirements of the Act. We do not necessarily agree, but in any event, FMCSA, the agency with jurisdiction, has answered the question that petitioner raised.

We have considered the petition for declaratory order, the Director's decision, and the petition for reconsideration, and we conclude that the prior decision was proper, correct, and in accordance with the applicable law. Accordingly, the petition for reconsideration will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for reconsideration is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>3</sup> Indeed, in Nancy Hall (slip op. at 4), we expressly noted that the court had not asked us to address licensing issues, which, we acknowledged (id. at 4, 5 n.8), were within the Secretary's jurisdiction.